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ORIGINAL

No. 91-5118

Supreme Court, U.S.
FILED

IN THE
Supreme Court of the United States

OCTOBER TERM, 1991

DERRICK MORGAN

vs.

PEOPLE OF THE STATE OF ILLINOIS

People of the State of Illinois vs.
The Attorney General of Illinois

BRIEF FOR THE ATTORNEY GENERAL
IN OPPOSITION TO THE PETITION
FOR WRIT OF HABEAS CORPUS

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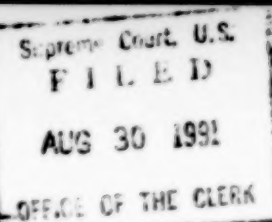
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 91-5118



IN THE
Supreme Court of the United States

OCTOBER TERM, 1991

DERRICK MORGAN,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition For Writ Of Certiorari To
The Supreme Court Of Illinois

BRIEF FOR RESPONDENT
IN OPPOSITION TO THE PETITION
FOR WRIT OF CERTIORARI

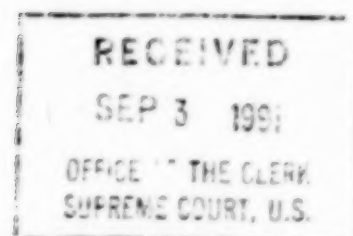
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QUESTION PRESENTED FOR REVIEW

Whether this Court would be giving an advisory opinion if it grants Certiorari to consider whether petitioner's jury should have been life qualified where the Illinois Supreme Court has already made a finding of fact that petitioner's jury was fair and impartial.

TABLE OF CONTENTS

Questions Presented for Review.....	i
Table of Contents.....	ii
Table of Authorities.....	iii
Opinion Below.....	1
Statement of Jurisdiction.....	1
Constitutional Provisions Involved.....	2
Statement of Facts.....	2
Reason for Denying the Writ:	

THE WRIT OF CERTIORARI SHOULD BE DENIED SINCE PETITIONER'S JURY WAS FAIR AND IMPARTIAL. THIS PETITIONER IS MERELY SEEKING AN ADVISORY OPINION ABOUT WHETHER PROSPECTIVE JURORS SHOULD BE LIFE QUALIFIED. FURTHER, LIFE QUALIFYING QUESTIONS ARE UNNECESSARY IN ILLINOIS SINCE OTHER QUESTIONS DURING VOIR DIRE AND JURY INSTRUCTIONS ASSURE A DECISION BY A FAIR AND IMPARTIAL JURY.

Conclusion.....	6
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TABLE OF AUTHORITIES

Cases:

<u>People v. Albanese</u> , 104 Ill. 2d 504, 473 N.E.2d 1246 (1984).....	5
<u>People v. Teague</u> , 108 Ill. App. 3d 891, 439 N.E.2d 1066, <u>cert. denied</u> , 464 U.S. 867 (1982).....	5
<u>Ross v. Oklahoma</u> , 487 U.S. 81 (1988).....	4

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

DERRICK MORGAN,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF ILLINOIS

BRIEF FOR RESPONDENT IN OPPOSITION TO THE
PETITION FOR A WRIT OF CERTIORARI

OPINION BELOW

The Supreme Court of Illinois decided this case on February 22, 1991. Rehearing was denied on April 1, 1991. The opinion is reported at 142 Ill. 2d 410, 568 N.E.2d 755 (1991).

STATEMENT OF JURISDICTION

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CONSTITUTIONAL PROVISIONS INVOLVED

Respondent accepts petitioner's presentation of the Sixth and Fourteenth Amendments.

STATEMENT OF THE CASE

Defendant stands convicted of the murder of David Smith. Defendant was hired by the El Rukn street gang to kill Smith since Smith was selling narcotics in El Rukn territory. Defendant picked Smith up from Smith's apartment and told him they had some cocaine to buy. Defendant and Smith then went to an abandoned apartment. When Smith tasted the "cocaine," he discovered it was really flour. Defendant then shot Smith in the head six times. Defendant was paid \$4,000 for the murder.

The same jury that convicted defendant also sentenced him to the death penalty.

Prior to trial, defendant asked the trial court to "life qualify" the jury by asking the prospective jurors if they would

automatically impose the death penalty if they found defendant guilty of the murder. The trial court refused to ask the question.

On direct appeal to the Illinois Supreme Court, petitioner argued that Ross v. Oklahoma, 487 U.S. 81 (1988) requires that potential jurors must be life qualified. The Illinois Supreme Court held:

In Ross, a prospective juror stated that he would automatically vote for the death penalty if the defendant were found guilty. The trial court refused to excuse the prospective jurors for cause, and the defendant used a peremptory challenge to remove the prospective jurors from the panel. (Ross, 487 U.S. at 83-85, 108 S.Ct. at 2276, 101 L.Ed.2d at 86-87.) The court found that although it was error not to excuse that potential juror for cause, the death sentence need not be reversed, as there was no showing that any juror on the defendant's jury was actually shown to be impartial. Ross, 487 U.S. at 91, 108 S.Ct. at 2280, 101 L.Ed.2d at 92.

In this case, the defendant's jury was selected from a fair cross-section of the community, each juror swore to uphold the law regardless of his or her personal feelings, and no juror expressed any views that would call his or her impartiality into question. Thus, as there was no showing that any actual juror on the defendant's jury was partial, the sentence is valid.

568 N.E.2d at 778.

Petitioner now asks this Court to grant Certiorari to consider whether the prospective jurors should have been life qualified.

REASONS FOR DENYING THE WRIT

THE WRIT OF CERTIORARI SHOULD BE DENIED SINCE PETITIONER'S JURY WAS FAIR AND IMPARTIAL. THIS PETITIONER IS MERELY SEEKING AN ADVISORY OPINION ABOUT WHETHER PROSPECTIVE JURORS SHOULD BE LIFE QUALIFIED. FURTHER, LIFE QUALIFYING QUESTIONS ARE UNNECESSARY IN ILLINOIS SINCE OTHER QUESTIONS DURING VOIR DIRE AND JURY INSTRUCTIONS ASSURE A DECISION BY A FAIR AND IMPARTIAL JURY.

Petitioner asks this Court to grant Writ of Certiorari to consider whether the prospective jurors should have been life qualified by asking them whether they would automatically impose death if they found defendant guilty of murder.

The Writ of Certiorari should be denied because petitioner has no direct interest in this question. The Illinois Supreme Court has already found that all of the members of the petitioner's jury were fair and impartial. Thus, even if this Court holds that the question should have been asked of the jurors, it will have no impact on petitioner. As in Ross v. Oklahoma, 487 U.S. 81 (1988), there would be no reason to reverse petitioner's conviction or sentence since both were imposed by a fair and impartial jury.

Moreover, as the instant case demonstrates, fair and impartial juries can be drawn in Illinois without "life qualifying" them. During voir dire, prospective jurors are asked

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DERRICK MORGAN,

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PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PROOF OF SERVICE

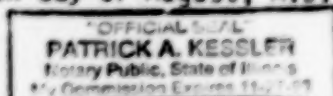
The undersigned, being first duly sworn, deposes and says that he served 3 copies of the Respondent's Brief in Opposition to the Petition for Writ of Certiorari in the above-entitled cause by depositing the same in the United States Mail at Chicago, on the 30th day of August, 1991 properly stamped and addressed to:

CHARLES M. SCHIEDEL
State Appellate Defender
400 South Ninth Street
P.O. Box 5720
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Springfield, Illinois 62705-5720
Attention: ALLEN H. ANDREWS

ROLAND W. BURRIS,
Attorney General
State of Illinois
TERENCE M. MADSEN,
Assistant Attorney General
100 West Randolph Street, Suite 1200
Chicago, Illinois 60601

William Henderson

STATE OF ILLINOIS
COUNTY OF COOK
Signed or Attested Before Me
this 30th day of August, A.D., 1991.



(Seal)

Patrick A. Kessler
Signature of Notary Public

NO. 91-5118

IN THE
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OCTOBER TERM, 1991

DERRICK MORGAN,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

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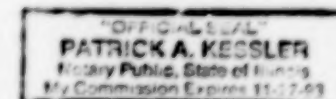
PROOF OF TIMELY FILING

The undersigned, being first duly sworn, deposes and says that in compliance with Supreme Court Rule 28.2, 12 copies of the Respondent's Brief in Opposition to the Petition for Writ of Certiorari were timely filed in this cause by depositing the same in the United States Mail at the United States Post Office, Chicago, Illinois, at 4:30 p.m. on the 30th day of August, 1991 with first-class postage prepaid and addressed to:

MR. WILLIAM K. SUTER, CLERK
United States Supreme Court
Supreme Court Building
Washington, D.C. 20543

William Henderson

STATE OF ILLINOIS
COUNTY OF COOK
Signed or Attested Before Me
this 30th day of August, A.D., 1991.



(Seal)

Patrick A. Kessler
Signature of Notary Public

whether they could be fair. See People v. Teague, 108 Ill. App. 3d 891, 439 N.E.2d 1066, cert.denied, 464 U.S. 867 (1982). During the death penalty proceedings, the jurors are repeatedly instructed that they must first determine whether a defendant is eligible for death. If the defendant is found eligible, only then must the jurors weigh the factors in mitigation and aggravation and determine whether there is any mitigating factor which precludes imposition of the death penalty. See People v. Albanese, 104 Ill. 2d 504, 473 N.E.2d 1246 (1984). Petitioner's argument supposes that the jurors would lie during voir dire and would refuse to follow the instructions given during the sentencing hearing. Petitioner's supposition is the antithesis of all that the American jury system represents.

In conclusion, the Writ of Certiorari should be denied since petitioner's jury was fair and impartial. This petitioner is merely seeking an advisory opinion about whether prospective jurors should be life qualified. Further, life qualifying questions are unnecessary in Illinois since other questions during voir dire and jury instructions assure a decision by a fair and impartial jury.

CONCLUSION

For all the foregoing reasons, the Respondent respectfully prays that this Honorable Court deny the petition for Writ of Certiorari.

Respectfully submitted,

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CHARLES M. SCHIEDEL
DEPUTY DEFENDER

July 1, 1991

Honorable William K. Suter
Clerk of the Supreme Court
of the United States
1 First Street, N.E.
Washington, D.C. 20543

RE: Derrick Morgan v. People of the State of Illinois

Dear Mr. Suter:

I have enclosed the Petition for Writ of Certiorari in the above-entitled cause. Please also find the following:

Appearance form,

Affidavit of mailing,

Motion for leave to proceed in forma pauperis,

Affidavit of indigency of the petitioner, and

Copy of the order of the Illinois Supreme Court staying petitioner's mandate, and a copy of counsel's affidavit required by that order.

Sincerely,

CHARLES M. SCHIEDEL
Deputy Defender

CMS:sah

Enclosure

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1991

DERRICK MORGAN, Petitioner

-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent

A F I D A V I T

I, CHARLES M. SCHIEDEL, state on oath:

1. I am a member of the Bar of the United States Supreme Court.

2. I am counsel of record for DERRICK MORGAN.

3. At. 4:30 p.m., on July 1, 1991, I deposited in the United States Post Office in Springfield, Illinois, with first class postage prepaid, and properly addressed to the Clerk of the United States Supreme Court, the original and ten copies of the Petition for Writ of Certiorari in the above-entitled cause.

3. The Petition for Writ of Certiorari is due to be filed June 30, 1991.

5. FURTHER AFFIANT SAYETH NOT

CHARLES M. SCHIEDEL
Deputy Defender

COUNSEL FOR PETITIONER

Subscribed and sworn to
before me on this 1st
day of July, 1991.

NOTARY PUBLIC



APPEARANCE FORM

SUPREME COURT OF THE UNITED STATES

No. _____

DERRICK MORGAN

(Petitioner)

vs.

PEOPLE OF THE STATE OF ILLINOIS

(Respondent)

The Clerk will enter my appearance as Counsel of Record for DERRICK MORGAN

(Please list names of all parties represented)

who IN THIS COURT is ☒ Petitioner(s) ☐ Respondent(s) ☐ Amicus Curiae

I certify that I am a member of the Bar of the Supreme Court of the United States:

Signature

(Type or print) Name CHARLES M. SCHIEDEL

☒ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm OFFICE OF THE STATE APPELLATE DEFENDER

Address 400 South Ninth, Suite 101, P.O. Box 5720

City & State Springfield, IL Zip 62705-5720

Phone (217) 782-1989

Rule 9

APPEARANCE OF COUNSEL

.1. An attorney seeking to file a pleading, motion, or other paper in this Court in a representative capacity must first be admitted to practice before this Court pursuant to Rule 5. The attorney whose name, address, and telephone number appear on the cover of a document being filed will be deemed counsel of record, and a separate notice of appearance need not be filed. If the name of more than one attorney is shown on the cover of the document, the attorney who is counsel of record must be clearly identified.

.2. An attorney representing a party who will not be filing a document must enter a separate notice of appearance as counsel of record indicating the name of the party represented. If an attorney is to be substituted as counsel of record in a particular case, a separate notice of appearance must also be entered.

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PRIORITY

Honorable William K. Suter
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